

VOLUME NO. 50

OPINION NO. 6

CRIMINAL JUSTICE INFORMATION - Dissemination of Crime Victim Information;
POLICE DEPARTMENTS - Dissemination of Crime Victim Information;
PRIVACY - Dissemination of Crime Victim Information;
SHERIFFS - Dissemination of Crime Victim Information;
STATUTORY CONSTRUCTION - Dissemination of Crime Victim Information;
MONTANA CODE ANNOTATED - Sections 44-5-103, (3), (12), (13), -303, -311, (1), (3),
-502 to -504, -507;
MONTANA CONSTITUTION - Article II, sections 9, 10;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 119 (1988).

- HELD:
1. When a crime victim requests confidentiality, the public dissemination of certain information, including the address, telephone number, or place of employment of the victim or a member of the victim's family is prohibited, unless an exception listed in Mont. Code Ann. § 44-5-311(1) applies.
 2. Information directly or indirectly disclosing the identity of victims of certain sex crimes may not be publicly disseminated unless an exception listed in Mont. Code Ann. § 44-5-311(1) applies.
 3. A law enforcement agency may disclose a crime scene location under Mont. Code Ann. § 44-5-311(1), (3), even if such disclosure may suggest the identity of the victim.

April 1, 2004

Ms. Mary Van Buskirk
Havre City Attorney
P.O. Box 231
Havre, Montana 59501-0231

Dear Ms. Van Buskirk:

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You have requested my opinion concerning the dissemination provisions of the Montana Criminal Justice Information Act of 1979. I have phrased your questions as follows:

1. Does the creation of a policy providing complete confidentiality to victims upon their request violate the dissemination procedures found in Mont. Code Ann. § 44-5-303?
2. Can the Havre Police Department withhold crime scene address information in instances where publicly disclosing the address of the crime scene would suggest the identity of the victim?

The answers to your questions require an examination of Montana's Criminal Justice Information Act of 1979 (hereinafter the Act). The Act provides guidance for the dissemination of criminal justice information and specifically covers the dissemination procedure for victim's information.

The Montana Legislature considered two competing fundamental constitutional rights, the right of individual privacy, Article II, section 10 of the Montana Constitution, and the public's right to know, Article II, section 9 of the Montana Constitution, as well as the comments and suggestions of Montana press representatives, in drafting and enacting the Criminal Justice Information Act of 1979. See Minutes of Senate Judiciary Committee, February 7, 1979; Minutes of House Judiciary Committee, March 13, 1979.

When the Act was passed following extensive amendment in committee, it contained the following statement of purpose:

The purpose of this chapter is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in confidential and nonconfidential criminal justice information collection, storage and dissemination.

The Act's purpose of protecting individual privacy is manifested by the division of all criminal justice information into two categories, "public criminal justice information," which is specifically enumerated and may be disseminated to the public, and "confidential criminal justice information," which in addition to being enumerated, is also defined as "any other criminal justice information not clearly defined as public criminal justice information."

Mont. Code Ann. § 44-5-103(3), (12). Confidential criminal justice information cannot be disseminated to the public. Mont. Code Ann. § 44-5-303.

The Act defines public criminal justice information as:

- (a) information made public by law;
- (b) information of court records and proceedings;
- (c) information of convictions, deferred sentences, and deferred prosecutions;
- (d) information of postconviction proceedings and status;
- (e) information originated by a criminal justice agency, including:
 - (i) initial offense reports;
 - (ii) initial arrest records;
 - (iii) bail records; and
 - (iv) daily jail occupancy rosters;
- (f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or
- (g) statistical information.

Mont. Code Ann. § 44-5-103(13).

Obviously, if information deemed confidential appears within one of the public documents listed in the statute, a question arises as to precisely what may be publicly disseminated. In examining the issue of confidential information within initial offense reports and initial arrest records, Attorney General Mike Greely determined that if an initial offense report or initial arrest record contained information defined as confidential by the Act, that information would need to be redacted prior to public dissemination. 42 Op. Att'y Gen. No. 119 (1988).

In 1995, the Act was amended to address the dissemination of victim information. Mont. Code Ann. § 44-5-311 specifically removes victim information from the realm of public criminal justice information by mandating that it not be disseminated under certain circumstances. Mont. Code Ann. § 44-5-311 states:

Nondisclosure of information about victim.

- (1) If a victim of an offense requests confidentiality, a criminal justice agency may not disseminate, except to another criminal justice agency,

the address, telephone number, or place of employment of the victim or a member of the victim's family unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

(2) The court may not compel a victim or a member of the victim's family who testifies in a criminal justice proceeding to disclose on the record in open court a residence address or place of employment unless the court determines that disclosure of the information is necessary.

(3) A criminal justice agency may not disseminate to the public any information directly or indirectly identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507 unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

Mont. Code Ann. § 45-5-311.

This is an area in which statutory and constitutional provisions overlap. Analysis therefore begins with the provisions of the statutes, though it may not necessarily end there. See Worden v. Montana Bd. of Pardons and Parole, 1998 MT 168, ¶ 37, 289 Mont. 459, 471, 962 P.2d 1157, 1165 (Board obligated to assert and weigh privacy interests under Article II, section 9 standards in determining whether statutory provisions governing parole records apply). Ordinary principles of statutory construction must be applied to determine the proper interpretation of section 44-5-311. The fundamental rule of statutory construction is that the intention of the Legislature controls. The legislative intent should be determined from the plain language of the statute if possible. Missoula County v. American Asphalt, Inc. 216 Mont. 423, 426, 701 P.2d 990, 992 (1985); W. D. Constr., Inc. v. Gallatin County Bd. of Comm'rs, 218 Mont. 348, 351, 707 P.2d 1111, 1113 (1995).

This Act represents a legislative attempt to balance two competing fundamental rights under the Montana Constitution: the public's right to know and the individual's right of privacy. Mont. Const. Art II, §§ 9, 10. A statute should be construed in a manner that "uphold[s] the constitutionality of legislative enactments if such can be accomplished by reasonable construction." Belth v. Bennett, 227 Mont. 341, 345, 740 P.2d 638, 641 (1987) (citation omitted). The Legislature, in enacting this provision of the Act, identified significant privacy

concerns for crime victims. The reasoning behind this determination is sound. Disclosure of the identity of a crime victim could compound what is already a deeply traumatic experience. Further, protecting the sensitive privacy concerns of the victims also serves the public interest in efficient law enforcement, because they promote prompt reporting of criminal activity. As noted by Attorney General Greely, “routine public disclosure of the child victims of incest, for example, would have an obvious chilling effect on the reporting of this widespread and insidious crime.” 42 Op. Att’y Gen. No. 119 (1988)

The plain language of the Act prohibits a criminal justice agency from disseminating “the address, telephone number, or place of employment of the victim or a member of the victim’s family” if the victim requests confidentiality. Mont. Code Ann. § 44-5-311(1). In addition, with respect to the victim of certain enumerated sex crimes, the agency may not disclose “any information directly or indirectly identifying the victim.” Mont. Code Ann. § 44-5-311(3). Therefore, it is my opinion that under the Act as interpreted by 42 Op. Att’y Gen. No. 119 (1988), this victim information may be redacted from public criminal justice information documents prior to dissemination under the conditions described in Mont. Code Ann. § 44-5-311(1), (3) if the victim requests confidentiality or is the victim of a sex crime. Two exceptions, one statutory and the other constitutional, must be considered, however, in applying the statute.

Both pertinent subsections of the statute provide some limitations on the prohibition of the dissemination of victim information. Disclosure of victim information is not prohibited if disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause. Mont. Code Ann. § 44-5-311.

I recognize that in some of Montana’s communities, the disclosure of an address of a crime scene may suggest the identity of the victim. However, as stated above, ordinary rules of statutory interpretation must govern my analysis of this issue. This again requires an examination of the plain language of the statute as a first step in determining legislative intent. American Asphalt, Inc., 701 P.2d at 992; W. D. Constr., Inc., 707 P.2d at 1113.

This Act represents the Montana Legislature’s attempt to balance two important rights: the right to know and the right to privacy. Any attempt to balance these rights must begin with recognition of the public’s long-standing right to know about the existence of crime within the community. Disclosure alerts the public that a particular crime has occurred and serves to warn the community about any danger involved. An alerted public can provide law

enforcement with valuable investigative information. This limiting language requiring disclosure of crime scene information is quite specifically placed in two of the three subsections referring to dissemination of victim information. Mont. Code Ann. § 44-5-311(1) and (3).

The plain language of the statute clearly requires dissemination of crime scene information regardless of the status of the victim. It is, therefore, my opinion that disclosure of crime scene information generally is required even if the victim of the crime has requested confidentiality or is the victim of a sex crime and such disclosure may inadvertently implicate the identity of the victim.

As noted above, the issue of disclosure of criminal justice information frequently involves the intersection of statutory provisions and the constitutional rights guaranteed by Article II, sections 9 and 10 of the Montana Constitution. While in many cases the balance struck by the statute will produce an appropriate weighing of the respective interests in disclosure, there may be cases in which the facts and circumstances of the matter dictate a result different from the one produced by straightforward application of the statute. Any rule that would allow the statute to determine conclusively whether the right to privacy clearly outweighs the interest in public disclosure would run afoul of the constitution as interpreted in Worden. Thus, in applying the statute, the agency must evaluate in every case whether the producing or withholding of information would violate Article II, sections 9 and 10. Worden, 1998 MT ¶ 37; see In re Lacy, 239 Mont. 321, 325, 780 P.2d 186, 188 (1989) (person is “authorized by law to receive” information if disclosure satisfies the balancing test of Article II, section 9). In doubtful cases, the agency may submit the matter to the courts for determination under the Uniform Declaratory Judgments Act, Mont. Code Ann. Tit. 27, ch. 8, or Mont. Code Ann. § 44-5-311(1)(3).

THEREFORE, IT IS MY OPINION:

1. When a crime victim requests confidentiality, the public dissemination of certain information, including the address, telephone number, or place of employment of the victim or a member of the victim’s family is prohibited, unless an exception listed in Mont. Code Ann. § 44-5-311(1) applies.
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3. A law enforcement agency may disclose a crime scene location under Mont. Code Ann. § 44-5-311(1), (3), even if such disclosure may suggest the identity of the victim.

Very truly yours,

MIKE McGRATH

Attorney General

mm/pdb/jym